



April 17, 2000

Ms. Kimberly Drysdale  
City Secretary  
City of Ingleside  
P.O. Drawer 400  
Ingleside, Texas 78362

OR2000-1520

Dear Ms. Drysdale:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134182.

The City of Ingleside (the "city") received a request for four notebooks kept by police department (the "department") personnel. You claim that the requested information is not subject to Chapter 552 of the Government Code. We have considered your argument and reviewed the submitted information.

The city seeks to withhold the four notebooks in their entirety on the grounds that they are not "public information" subject to the Public Information Act (the "Act"). The city argues that the notebooks are the personal notes of Chief Crider, Corporal Taylor, and Sergeant Steele and, as such, are not public information.

Section 552.002 of the Government Code defines public information subject to the Act as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Gov't Code § 552.002(a). Information is generally public information within the Act when it relates to the official business of a governmental body or is used by a public official or employee in the performance of official duties, even though it may be handwritten or in the possession of one person. Open Records Decision No. 635 at 4 (1995). The following factors, although not an exhaustive list, are relevant to determining whether documents are essentially personal in nature: who prepared the document; the nature of its contents; its purpose or use; who possessed it; who had access to it; whether the employer required its preparation; and whether its existence was necessary to or in furtherance of the employer's business. *Id.* at 5 (citing *In re Grand Jury Proceedings*, 55 F.3d 1012, 1014 (5<sup>th</sup> Cir. 1995)). We have also held that the ratio of personal to work-related entries is relevant to the nature of the document: "As a general rule, the greater proportion of personal entries, the more likely it is that the trier of fact could reasonably conclude that it was prepared, used, and maintained as a personal document."

Open Records Decision No. 635 at 5, fn 5 (quoting *In re Grand Jury Proceedings*, 55 F.3d at 1014). Further, if information maintained on a privately-owned medium were actually used in connection with the transaction of official business, such as recording the substance of work-related appointments after they have taken place, then the information would be subject to the Act. Open Records Decision No. 635 at 8.

In *City of Garland v. Dallas Morning News*, 43 Tex. Sup. Ct. J. 303 (Jan. 13, 2000), the supreme court, in deciding whether a draft memorandum was public information, focused on the use of the information. A plurality of the court held:

[T]he mere creation of a draft is not transacting official business. But if the draft document is used in connection with transacting official business, then the draft document becomes public information.

*Id.* The court went on to conclude:

The memorandum became public information under the Act when the city manager and the city council used it in deciding how to handle the problem with the finance director, a decision involving the City's official business.

*Id.*

For the purposes of our analysis, we look to the nine factors cited above,<sup>1</sup> keeping in mind the emphasis provided by *Dallas Morning News*.

#### Sergeant Steele's Book

Our review of the information relating to Sergeant Steele's book indicates: (1) the book was prepared exclusively by Sergeant Steele at his own expense; (2) it contains short, generally factual notes exclusively related to work with very little editorial comment; (3) its apparent purpose is for maintaining a chronological record of work-related events; (4) Sergeant Steele had exclusive possession; (5) Sergeant Steele had exclusive access; (6) there is a dispute regarding whether Chief Crider ordered its preparation; (7) although its purpose is disputed, its existence is apparently in furtherance of the department's business; (8) there are no exclusively personal entries; and (9) its actual use is disputed, although its value in the transaction of official business is apparent. We conclude Sergeant Steele's book is public information and subject to disclosure.

#### Corporal Taylor's Book 1

Our review of the information relating to Corporal Taylor's book indicates: (1) the book was prepared exclusively by Corporal Taylor at her own expense; (2) it contains long, generally factual narratives along with short notes exclusively related to work with significant editorial comment; (3) its apparent purpose is for maintaining a chronological record of work-related events as well as observations regarding the job performance of her subordinates; (4) Corporal

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<sup>1</sup>Other factors might be appropriate under different circumstances.

Taylor had exclusive possession; (5) Corporal Taylor had exclusive access; (6) there is a dispute regarding whether Chief Crider ordered its preparation; (7) although its purpose is disputed, its existence is apparently in furtherance of the department's business; (8) there are no exclusively personal entries, although there are a number of Corporal Taylor's work-related opinions; and (9) its actual use is disputed, although its value in the transaction of official business is apparent. We conclude Corporal Taylor's book 1 is public information and subject to disclosure.

#### Corporal Taylor's Book 2 (warrant book)

Our review of the information relating to Corporal Taylor's warrant book indicates: (1) the book was prepared exclusively by Corporal Taylor at her own expense; (2) it contains short, factual listings of warrants and arrests sorted by month; (3) its purpose is cataloging warrants; (4) Corporal Taylor had exclusive possession; (5) Corporal Taylor had exclusive access; (6) it was not prepared at the direction of her employer; (7) although its purpose is disputed, its existence is apparently in furtherance of the department's business; (8) there are no exclusively personal entries; and (9) its actual use is disputed, however there is some evidence it was used in the transaction of official business. We conclude Corporal Taylor's warrant book is public information and subject to disclosure.

#### Chief Crider's Book

Our review of the information relating to Chief Crider's notebook indicates: (1) the book was prepared exclusively by Chief Crider at his own expense; (2) it contains chronologically ordered notes relating to department business; (3) its apparent purpose is to note past events and future tasks; (4) Chief Crider had exclusive possession; (5) Chief Crider had exclusive access; (6) it was not prepared at the direction of his employer; (7) although its purpose is disputed, its existence is apparently in furtherance of the department's business; (8) there are several entries that could be exclusively personal; and (9) its actual use is apparent as is its value in the transaction of official business is apparent. We conclude Chief Crider's notebook is public information and is subject to disclosure.

In each case, the notebooks contain information solely related to the transaction of the department's business. Further, there is some evidence that each of the books was used at the department from time to time and that the three subordinates' books had been presented to the chief for his inspection. In accordance with the analysis applied in *Dallas Morning News* and Open Records Decision No. 635, we conclude the notebooks were each used in the furtherance of the department's official business and are, therefore, public information subject to the Act. Because the city has raised no exceptions to disclosure, it must release the requested information, except for information that is confidential by law.

We note that Sergeant Steele's notebook contains what appear to be home telephone numbers of police officers and dispatchers. Section 552.117(2) excepts from disclosure information that relates to the home addresses, home telephone numbers, and social security numbers of police officers and information that reveals whether the officer has family members. Section 552.117(1) provides the same exception for other employees of a governmental body who request that this information remain confidential under section 552.024. The city must withhold this information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

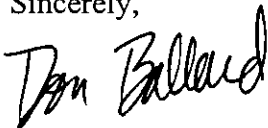
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Don Ballard  
Assistant Attorney General  
Deputy Chief, Open Records Division

JDB/CHS/ljp

Ref: ID# 134182

Encl. Submitted documents

cc: Mr. Paul Hindman  
3613 Marion  
Corpus Christi, Texas 78415  
(w/o enclosures)